

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**DENVER BRADLEY,**

Plaintiff,  
vs.

**Case No. 08-14973**  
**HONORABLE DENISE PAGE HOOD**

**COMMISSIONER OF SOCIAL  
SECURITY,**

**Defendant.**

---

/

**ORDER ACCEPTING REPORT AND RECOMMENDATION**

This matter is before the Court on Magistrate Judge Mark A. Randon's Report and Recommendation, dated August 18, 2009. Neither Defendant nor Plaintiff filed any objections to the Magistrate Judge's Report and Recommendation.

Judicial review of the Commissioner's decision is limited in scope to determining whether the findings of fact made by the Commissioner are supported by substantial evidence, and deciding whether the Commissioner employed the proper legal criteria in reaching his or her conclusion. *Garner v. Heckler*, 745 F. 2d 383 (6th Cir. 1984). The decision of the Commissioner must be upheld if supported by substantial evidence, even if the record might support a contrary decision. *Smith v. Secretary of HHS*, 893 F. 2d 106, 108 (6th Cir. 1989). An administrative decision must be affirmed if supported by substantial evidence, even if the Court might arrive at a different conclusion. *Mullen v. Bowen*, 800 F. 2d 535, 545 (6th Cir. 1986) (*quoting Baker v. Heckler*, 730 F. 2d 1147, 1150 (8th Cir. 1984)).

The Magistrate Judge recommended that Plaintiff's motion for summary judgment be denied, and Defendant's motion for summary judgment be granted, and that the findings of the Commissioner be affirmed. The Court has had an opportunity to review this matter and finds that the Magistrate Judge reached the correct conclusion for the proper reasons. The Court finds that the Administrative Law Judge (ALJ) correctly applied the five-step disability analysis to Plaintiff's claim.

The Plaintiff heavily relies on evidence proffered in Dr. de Beaubien's deposition. The Defendant argued and the Magistrate Judge agreed that the Court could not remand for consideration this evidence as it was not part of the administrative record and the Plaintiff failed to demonstrate "good cause" for failing to submit this evidence. The Court agrees with the Magistrate Judge's conclusion in this regard. *See Cotton v. Sullivan*, 2 F. 3d 692, 695 (6th Cir. 1993).

Finally, Defendant further avers that Dr. de Beaubien's most limiting statement concerning Plaintiff's physical condition was "I think that he is probably looking at a permanent disability here" (Tr. At 128). In regards to this matter, Defendant notes that the ALJ did actually grant Plaintiff a permanent disability of upper extremity use (i.e. no lifting over 20 pounds, no weight away from body, no reaching above shoulder level and no pushing or pulling of over 10 pounds) (Tr. at 18). Defendant argues that the ALJ's decision is entirely consistent with the medical records of Dr. de Beaubien and is supported by substantial evidence. The Court agrees that the ALJ's decision (which became the final decision of the Commissioner) is supported by substantial evidence and therefore reversal of the decision is unwarranted.

Accordingly,

IT IS ORDERED that Magistrate Judge Mark A. Randon's Report and Recommendation

[Docket No. 16, filed August 18, 2009] is ACCEPTED and ADOPTED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment [Docket No. 10, filed on March 20, 2009 ] is DENIED.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment [Docket No. 13, filed on May 11, 2009 ] is GRANTED.

S/Denise Page Hood

Denise Page Hood

United States District Judge

Dated: October 30, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 30, 2009, by electronic and/or ordinary mail.

S/William F. Lewis

Case Manager